

(v) The entity maintains adequate surplus and reserves for undischarged liabilities of all types, as evidenced by a current audited financial statement and an actuarial review conducted in accordance with paragraph (d) of this section; and

(vi) Upon application for initial approval, the entity has proper organizational documentation, as evidenced by copies of the articles of incorporation, by-laws, business plans, copies of contracts with third party administrators, and an opinion from legal counsel that establishment of the entity conforms with all legal requirements under Federal, State, or tribal law. Any material changes made to these documents after initial approval must be submitted for review and approval before becoming effective.

(d) *Professional evaluations of performance.* Audits and actuarial reviews are required to be prepared and submitted annually to the HUD Office of Public and Indian Housing, for review and appropriate action, by nonprofit insurance entities that are not insurance companies approved under paragraph (c)(1) of this section. Selection of entities to perform such reviews shall comply with the competitive requirements of 24 CFR 85.36. In addition, an evaluation of other management factors is required to be performed by an insurance professional every three years. For fiscal years ending on or after December 31, 1993, the initial audit, actuarial review, and insurance management review required for a nonprofit insurance entity must be submitted to HUD within 90 days after the end of the entity's fiscal year.

(1) The annual financial statement prepared in accordance with generally accepted accounting principles (including any supplementary data required by GASB 10) is to be audited by an independent auditor (see 24 CFR part 44), in accordance with generally accepted auditing standards. The independent auditor shall express an opinion on whether the entity's financial statement is presented fairly in accordance with generally accepted accounting principles. A copy of this audit must be submitted to HUD.

(2) The actuarial review must be done consistent with requirements estab-

lished by the National Association of Insurance Commissioners and must be conducted by an independent property/casualty actuary who is an Associate or Fellow of a recognized professional actuarial organization, such as the Casualty Actuary Society. The report issued, a copy of which must be submitted to HUD, must include an opinion on any over or under reserving and the adequacy of the reserves maintained for the open claims and for incurred but unreported claims.

(3) A review must be conducted, a copy of which must be submitted to HUD, by an independent insurance consulting firm that has at least one person on staff who has received the professional designation of chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), of the following:

(i) Efficiency of any Third Party Administrator;

(ii) Timeliness of the claim payments and reserving practices; and

(iii) The adequacy of reinsurance coverage.

(e) *Revocation of approval of a nonprofit insurance entity.* HUD may revoke its approval of a nonprofit insurance entity under this section when it no longer meets the requirements of this section. The nonprofit insurance entity will be notified in writing of the proposed revocation of its approval, and the manner and time in which to request a hearing to challenge the determination. The procedure to be followed is specified in 24 CFR part 26, subpart A.

[60 FR 18186, Apr. 10, 1995, as amended at 61 FR 50219, Sept. 24, 1996]

§ 950.195 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with testing for and abatement of lead-based paint that the IHA undertakes, in accordance with the IHA's ACC or MHACC with HUD. The insurance coverage does not relieve the IHA of its responsibility for assuring that lead-

based paint testing and abatement activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the IHA undertakes lead-based paint testing and abatement, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by IHA employees, the IHA must obtain a liability insurance policy directly to protect the IHA. If the work is being done by a contractor, the IHA may obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the IHA as an additional insured; or it may obtain such insurance directly. Insurance must remain in effect during the entire period of testing and abatement and must comply with the following requirements:

(1) *Named insured.* If purchased by the IHA, the policy shall name the IHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the IHA as an additional insured, in connection with performing work under the IHA's lead-based paint testing and abatement contract. If the IHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the IHA, the RMC shall also be an additional insured under the policy in connection with the lead-based paint testing and abatement contract. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage limits.* The minimum limit of liability shall be \$500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed \$5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability. However, it will be permissible for the policy to have a limit on the amount payable for defense costs. If a limit is applicable, it must not be less than

\$250,000 per claim prior to such costs being deducted from the limit of liability.

(5) *Occurrence form policy.* The form used must be an "occurrence" form, or a "claims made" form that contains an extended reporting period of at least five years. (Under an occurrence form, coverage applies to any loss if the policy was in effect when the loss occurred, regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is \$1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Exception to requirements.* Insurance already purchased by the IHA or contractor and in force on the date this rule is effective, which provides coverage for the hazards involved in the testing for and abatement of lead-based paint, shall be considered as meeting the requirements of this rule until the expiration of the policy. This rule is not applicable to architects, engineers, or consultants who do not physically perform lead-based paint testing and abatement work.

(d) *Insurance for the existence hazard.* An IHA may also purchase special liability insurance against the existence hazard of lead-based paint, although it is not a required coverage. An IHA may purchase this coverage if, in the opinion of the IHA, the policy meets the IHA's requirements, the premium is reasonable, and the policy is obtained in accordance with applicable procurement standards of this subpart B. If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

Subpart C—Development

§ 950.200 Roles and responsibilities of Federal agencies.

HUD, IHS, BIA, and other appropriate agencies shall coordinate their functions in accordance with the Interdepartmental Agreement. HUD shall take the lead role in the coordination of the construction of Indian housing under this part.